



August 29, 2023

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

Dear Ms. Countryman:

The American Securities Association¹ (ASA) appreciates this opportunity to offer comments in response to the Securities and Exchange Commission (SEC) to determine whether to approve or disapprove the Proposed Rule Change submitted by the Financial Industry Regulatory Authority (FINRA) to the SEC regarding the Remote Inspections Pilot Program (Pilot Program) under FINRA Rule 3110 (Supervision). ASA strongly supports the Pilot Program and urges the Commission to swiftly approve the rule change.

I. Background.

The COVID-19 pandemic demonstrated that remote inspections can be efficient and effective because they allow broker-dealers to centralize their compliance capability. In fact, the industry witnessed with great success how firms availed themselves of the opportunity to use the pandemic relief to perform exams remotely, despite the challenging times the industry faced during the pandemic. Since then, ASA and other firms have been successful in polishing and streamlining their approach to remote inspections and remote supervision, becoming well-versed at identifying risk virtually. As such, the ASA believes the SEC and FINRA should permit this approach to continue. Firms have demonstrated their ability to manage proper oversight of registered individuals and office locations without compromising investor protection.

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





That said, we do have feedback on the proposed Pilot Program that we would like to reiterate from our previous letter to the SEC dated May 25, 2023.² In that letter, ASA stressed the need for continued dialogue between FINRA and the SEC and those entities who they regulate to ensure the appropriate balance between regulatory oversight and an evolving market is achieved. Too often, certain voices with no practical knowledge of how our businesses work send in hyperbolic letters threatening weakened investor protection without any evidence that investor protections have been eroded.³ Thus, we encourage the SEC to assess those comments with an eye towards understanding the motivation of the groups submitting them and to balance them against industry firms who have proven without market incident, that remote supervision does work and has not, in fact, caused any disruption in customer protection.

II. The Remote Inspection Pilot Program Must Be Considered in Conjunction with FINRA's Residential Supervisory Location (RSL) Proposal.

As the ASA wrote in its May 25, 2023 letter, we believe the RSL strikes the right balance by allowing firms to continue to hire the most qualified candidates, regardless of their location, and to retain existing employees who are forced to relocate due to a variety of reasons.

Firms currently conduct prudent risk assessments, and take these responsibilities very seriously, prior to allowing remote supervision. If there are concerns at a particular location based on failed office inspections or a history of issues, then the firm also internally determines, using its own metrics, that those individuals should not be part of the remote surveillance program.

We believe that remote supervisory personnel are generally low-risk employees, as most do not have clients. Therefore, harmonizing their inspection requirements to match those of a firm's registered representatives in a branch office would be extremely efficient.

Ultimately, ASA believes inspections of home offices should be limited to instances where there is cause and, as such, the proposal should consider differences between a true home office and the office of an individual who has been provided permission to work from home a few days a week from their secure technology. If not corrected, the rule will greatly increase the number of homes that need to be audited and those audits will be incrementally costly, time-consuming, and will result in an outsized cost to regional financial services firms.

² See ASA Letter to the SEC dated May 25, 2023 in response to Release No. 34-97398; File No. SR-FINRA-2023-007: <https://www.sec.gov/comments/sr-finra-2023-007/srfinra2023007-201259-402682.pdf>

³ Letter on behalf of the North American Securities Administrators Association, Inc. in response to U.S. Securities and Exchange Commission Release No. 34-95452, Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) (the "Pilot Program Proposal") and Release No. 34-95379, Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) (the "Supervisory Location Proposal") (collectively, the "Proposals")., available here: <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20137299-307862.pdf>.





III. Clearer Definition of Trading Activities.

Firms would benefit from a clearer definition of trading activities and what may be permissible to meet the pilot qualifications versus not permissible. Section g(1)(F) describes the engagement of proprietary trading, including the incidental crossing of customer orders, as an ineligible criterion for participation in the pilot. Also included as an ineligible criterion in section g(1)(G) is any location that handles customer funds or securities. However, the bulk of required processing and supervisory activities related to the acceptance of funds or securities happens outside of the branch locations where firms are monitoring receipt of funds and securities centrally and electronically. These activities occur at nearly every branch location, other than home office locations, thereby eliminating a significant number of branches from eligibility in the pilot. As a result, we ask that FINRA and the SEC work with the industry to come to an outcome that does not result in firms being unable to avail themselves of the pilot program.

IV. Internal Inspections.

Additionally, the Remote Inspections Proposal associated with 3110(c) internal inspections is one point-in-time based component of the supervision rule which more broadly requires firms to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules”. The supervision rule goes on to outline a firm’s need to establish a supervisory system, including written supervisory procedures, and transaction review to highlight just a few of the ongoing requirements throughout the year. The Pilot Proposal will continue to require firms to follow a risk-based framework to determine examination schedules as currently required within 3110(c), only then following a prescribed risk-based framework in the proposal, could firms determine which low risk locations might be examined remotely.

V. The Remote Inspection Pilot Program Generally.

ASA believes the SEC should, at the very least, permit the Pilot Program to continue as a voluntary three-year program. Throughout that time, participating firms will be required to submit data to FINRA on a consistent basis in order to prove the effectiveness of these exams and allow for an additional level of oversight by regulators. It should be noted that while participation is voluntary, and a number of firms have returned to on-site exams, the program is being utilized with success by firms of all sizes – from small broker-dealers to the largest broker-dealers in the country. The process of proposing the Pilot Program has been strengthened by the active participation of all of these firms. We would also encourage both the SEC and FINRA to continue to engage in dialogue with industry participants in contemplation of a move toward a permanent remote inspection and remote supervision regime.

We also encourage the SEC to notify the industry as soon as practicable about its intentions as to whether it plans to approve or disapprove of FINRA’s proposed rule change. And while we urge





the SEC to approve FINRA's proposed rule change, should the SEC decide not to approve the proposed rule change, we strongly suggest the SEC provide adequate time – at least until July 2024 – for firms to unwind current systems. Any unnecessary delay accompanying a disapproval of this proposal would unduly harm industry firms.

IV. Conclusion

Thank you for considering our feedback and we look forward to continued dialogue to achieve the appropriate balance between regulatory oversight and an evolving market.

Sincerely,

Jessica R. Giroux

Jessica R. Giroux
General Counsel & Head of Fixed Income Policy
American Securities Association

